

Message Text

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TAGS: EFIN, EIND, HA
SUBJECT: DUPONT CARIBBEAN

REF: STAE 002286

1. DURING JANUARY 16 CONVERSATION WITH FOREIGN MINISTER BRUTUS, I PRESENTED RATIONALE FOR MAKING FURTHER SERIOUS EFFORT TO DISPOSE OF TROUBLESOME DUPONT CARIBBEAN DISPUTE THROUGH RECOURSE TO ARBITRATION E.G. ICSID. I EXPLAINED THAT WE TOOK NO POSITION ON MERITS OF CASE, BUT BELIEVED THAT THIS SOLUTION WOULD CLEARLY SERVE HAITI'S INTERESTS, PARTICULARLY IN VIEW OF HAITI'S CURRENT DRIVE FOR NEW INVESTMENT SOURCES AND POSSIBLE APPLICABILITY OF TRADE ACT'S PROVISIONS GOVERNING GSP ELIGIBILITY. I HANDED BRUTUS A LETTER (BASED ON REFTEL) DETAILING THE RATIONALE FOR THIS SUGGESTION (COPY POUCHED ARA-LA/CAR JANUARY 16).

2. BRUTUS, AS EXPECTED, WAS UNENTHUSIASTIC ABOUT RE-OPENING ANY ASPECT OF THE DCI CASE, POINTING OUT THAT UNDER HAITIAN LAW IT WAS DEFINITELY CLOSED. IF COMPENSATION ISSUE WERE NOW TO BE ADDRESSED SEPARATELY UNDER HAITIAN LAW, HE SAID, HAITIAN STATE WOULD UNDOUBTEDLY MAKE STRONG COUNTERCLAIM FOR DAMAGES, BOTH MATERIAL AND MORAL. BRUTUS PROFESSED INABILITY TO UNDERSTAND RELEVANCE OF TRADE ACT PROVISIONS OF GSP SINCE ACT OF EXPROPRIATION, HE CONTENDED, HAD NOT OCCURRED. NEVERTHELESS, AFTER FURTHER DISCUSSION, HE SEEMED TO UNDERSTAND NEED FOR A NEW EFFORT TO SET MATTER AT REST, AND HE PROMISED TO HAVE HIS LEGAL ADVISOR WRITE HIM A BRIEF AS BASIS FOR PROVIDING CONSIDERED RESPONSE TO OUR LETTER.

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3. COMMENT: WE ARE NOT SANGUINE THAT ARBITRATION SUGGESTION WILL
FLY, BUT AT LEAST PROSPECTS OF DIALOGUE HAVE BEEN IMPROVED WITH
ASSIGNMENT TO MINISTRY OF ABLE YOUNG LEGAL ADVISOR (MALARY), WHO
WAS TRAINED IN US, HAS BETTER GRASP OF U.S. LAW THAN ANY HAITIAN WE
HAVE MET THUS FAR, AND IS FAMILIAR WITH ICSID. MEANTIME, WE
WOULD APPRECIATE RECEIVING FROM DEPARTMENT LEGAL OFFICE LANGUAGE WE
COULD USE IN EXPLAINING TO BRUTUS PRECISELY HOW THE HAITIAN COURT'S
CANCELLATION OF DCI CONTRACT FOR NON-PERFORMANCE IS RELATED TO AN
ACT OF EXPROPRIATION UNDER INTERNATIONAL LAW. WOULD ALSO BE USEFUL
TO KNOW WHETHER ICSID ARBITRATORS HAVE EVER AWARDED DAMAGES OR
OTHERWISE VINDICATED GOVERNMENTS WHICH WERE PARTIES TO DISPUTES
PLACED BEFORE IT--RATHER THAN "SPLITTING THE DIFFERENCE" OF COMPENSAT
ION
CLAIMED BY PRIVATE PARTIES.
ISHAM

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